

**From:** [Terada, Calvin](#)  
**To:** [Fowlow, Jeffrey](#); [Villa, Clifford](#)  
**Subject:** Re: Ashue Road agreement  
**Date:** Thursday, August 08, 2013 3:34:33 PM

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Thanks. Now that Loretta is out of the picture, it looks like Derald is following activities directly. Since he is a Director, his preferred path of communication could be through me as a matter of protocol. I am happy to serve as a communication conduit if that is what we need to do to keep information open between us and the Tribe.

Calvin J. Terada, Manager  
Emergency Response Unit  
U.S. EPA Region 10

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**From:** Fowlow, Jeffrey  
**Sent:** Thursday, August 08, 2013 3:30:02 PM  
**To:** Villa, Clifford; Terada, Calvin  
**Subject:** FW: Ashue Road agreement

Forgot to include you.

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**From:** Fowlow, Jeffrey  
**Sent:** Thursday, August 08, 2013 3:28 PM  
**To:** Derald Ortloff  
**Subject:** FW: Ashue Road agreement

Derald,

Please see below Cliff's email to the attorney representing Groat Brothers and copied to all the other attorneys affiliated with this project. There currently is no agreement for the PRPs to assume the work at Ashue Road. I am continuing to prepare to mobilize on Monday. As the third paragraph states, EPA would discuss any proposals received with Yakama Nation and Yakima County.

Respectfully,  
Jeffrey Fowlow

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**From:** Villa, Clifford  
**Sent:** Thursday, August 08, 2013 10:00 AM  
**To:** Barry G. Ziker  
**Cc:** Carly Summers; John Ahlers; [RWetmore@dunnandblack.com](mailto:RWetmore@dunnandblack.com); John Black; [groatdennis@yahoo.com](mailto:groatdennis@yahoo.com); [Tom@twclark.com](mailto:Tom@twclark.com); PAUL BEATTIE; [paul.mcilrath@co.yakima.wa.us](mailto:paul.mcilrath@co.yakima.wa.us); Julio Carranza; [tgold@sjzlaw.com](mailto:tgold@sjzlaw.com)  
**Subject:** Ashue Road agreement

Barry,

I am glad to hear you are giving serious consideration to the proposal we discussed yesterday. From our perspective, this proposal is nothing new; in fact, it was the same proposal we presented orally at the meeting in Toppenish on March 18, then discussed with legal counsel on March 19, followed

by the written proposal I provided to counsel on March 20, attached here for reference. Making the same observation you provide below, it has never made sense to us that anyone should spend roughly the same amount on investigation as it would to conduct the removal itself and be done with it. However, EPA's CERCLA removal authority does not extend to uncontaminated construction debris, and if that is truly all there is at this site, then we cannot provide for the excavation ourselves. Based on what we know now, however, we can continue our investigation and conduct the limited removal of the materials where asbestos fibers have already been confirmed, and that is precisely what we are planning to do at the Site beginning Monday.

If the PRPs would like to proceed down another, perhaps more logical and cost-efficient track, consistent with the attached proposal of March 20 and our model Administrative Order on Consent (also attached, and slightly tailored already for this site), please let me know ASAP. We don't need to negotiate this agreement fully today, but we would accept an exchange of emails today to confirm your commitment for proceeding in this direction, with a clear expectation that all excavation work will be completed this field season of 2013.

In providing this response, I will also say that all remains subject to proper approvals from EPA management, with opportunity for input from the Yakama Nation and Yakima County, whose legal counsel I have also copied here.

Best Regards,

**Clifford J. Villa**

Assistant Regional Counsel

U.S. Environmental Protection Agency, Region 10

(206) 553-1185 (office) | (206) 419-2744 (cell)

---

**From:** Barry G. Ziker [<mailto:bziker@jzplaw.com>]

**Sent:** Wednesday, August 07, 2013 11:33 PM

**To:** Villa, Clifford

**Cc:** Carly Summers; John Ahlers; [RWetmore@dunnandblack.com](mailto:RWetmore@dunnandblack.com); John Black; [groatdennis@yahoo.com](mailto:groatdennis@yahoo.com); [Tom@twclark.com](mailto:Tom@twclark.com)

**Subject:** RE: Ashue Road

ER 408 COMMUNICATION

Cliff,

We are not foreclosing the possibility of removing all of the materials that were brought to the Ashue Road site from the Wapato High School demolition project and are open to discussion. After our call today, we did begin to assess the cost of removal. What is not clear, and what would be most helpful to understand, is the nature of the agreement under which this would be done. For example, do you anticipate that we would enter into an agreed order, letter agreement, or some other type of agreement? We would also need some basic assurances regarding the manner in which we are able to conduct the removal, the limitations on our removal action (i.e., responsibility only for construction debris and not other waste disposed of

at the property by third parties), and the like. We would certainly discuss this with you in good faith and I would not be writing to you unless this was earning serious consideration on our side.

The practical challenge is that we have essentially one business day to work something out, and I am on an airplane for much of the day tomorrow. I do not want my personal time limitation to foreclose a possibility for our clients to resolve this matter, but at the same time, it's difficult to get a meaningful deal done with essentially no time for meaningful discussions about important issues like the scope of work and releases from liability.

I'm also curious to know how EPA has arrived at a disposal cost of \$200,000, and if that is, in fact, the case, then it is all the more perplexing that EPA has elected to conduct an investigation for roughly the same amount of money. This simply makes no sense to me.

Given that we first discussed this proposal this afternoon, I have obviously not had any meaningful opportunity to review this proposal. From my perspective, however, I can assure you that we are considering this in good faith, and are willing to talk with EPA about a resolution based upon removal. If you can provide a chance to seriously consider this proposal, we will continue this dialogue. My flight leaves at 10 am, and my cell phone number is 206.321.2696. You can also speak to Carly Summers at our office.

Thanks.

Barry

Barry G. Ziker  
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**From:** Villa, Clifford [<mailto:Villa.Clifford@epa.gov>]  
**Sent:** Wednesday, August 07, 2013 8:29 PM  
**To:** Barry G. Ziker  
**Subject:** RE: Ashue Road

Barry, nice talking today. Attached, as promised, is the "Yakama Nation (2012)" report referenced in the action memorandum.

Although we only discussed it quickly this afternoon, I suppose I will encourage you one last time to talk with your clients and the other PRPs about the idea of conducting a full excavation of the material your clients disposed on the property, rather than wait to see the results of EPA's \$174K action next week. By our ballpark guess, the excavation option might only run around \$200K, and perhaps substantially less out of pocket if your own trucks and people were employed. On the other hand, if the results of EPA's work next week show an actual asbestos concern, or even if the results are inconclusive, the costs will likely continue to escalate.

I understand and appreciate your evidentiary arguments, and I realize that every conclusion you have reached may be accurate. But tomorrow (Thursday) is probably the last real chance that we will have to pull back our contractors from mobilizing on Monday, so if any of your folks were inclined to reconsider, we would need to hear that by COB tomorrow.

If I don't hear from you tomorrow, you know the plan, and I'm sure we'll be talking again.

Best,

**Clifford J. Villa**

Assistant Regional Counsel

U.S. Environmental Protection Agency, Region 10

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**From:** Barry G. Ziker [<mailto:bziker@jzplaw.com>]

**Sent:** Wednesday, August 07, 2013 1:48 PM

**To:** Villa, Clifford

**Subject:** RE: Ashue Road

Cliff,

Thanks for speaking with me this morning. I just want to confirm that we can (and will) have Argus Pacific at the property on Monday to begin assessment of materials for asbestos. Whether this is in lieu of – as we discussed – or in addition to EPA contractors. We can take over the job at any point in time, but again, can begin investigation on Monday with our consultant in consultation with EPA.

Barry

Barry G. Ziker

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**From:** Villa, Clifford [<mailto:Villa.Clifford@epa.gov>]

**Sent:** Tuesday, August 06, 2013 6:10 PM

**To:** Barry G. Ziker

**Cc:** Carly Summers

**Subject:** Re: Ashue Road

Perfect. Thanks. I'll expect your call then.

Clifford J. Villa

Assistant Regional Counsel

U.S. EPA Region 10

desk: (206) 553-1185

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**From:** Barry G. Ziker <[bziker@jzplaw.com](mailto:bziker@jzplaw.com)>

**Sent:** Tuesday, August 06, 2013 5:26:26 PM

**To:** Villa, Clifford

**Cc:** Carly Summers

**Subject:** RE: Ashue Road

Cliff - 10 am would be great. Carly and I will call you at your desk.

Thanks.

Barry

Barry G. Ziker

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**From:** Villa, Clifford [<mailto:Villa.Clifford@epa.gov>]  
**Sent:** Tuesday, August 06, 2013 5:25 PM  
**To:** Barry G. Ziker  
**Subject:** Re: Ashue Road

I have a conflict tomorrow at 11.

10 or 12 noon?

Clifford J. Villa  
Assistant Regional Counsel  
U.S. EPA Region 10  
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cell: (206) 419-2744

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**From:** Barry G. Ziker <[bziker@jzplaw.com](mailto:bziker@jzplaw.com)>  
**Sent:** Tuesday, August 06, 2013 3:24:02 PM  
**To:** Villa, Clifford  
**Cc:** John Black; Rick Wetmore; John Ahlers; Scott Parker; Carly Summers  
**Subject:** RE: Ashue Road

Cliff,

Are you available to talk tomorrow at 11 am?

Thanks.

Barry

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**From:** Villa, Clifford [<mailto:Villa.Clifford@epa.gov>]  
**Sent:** Monday, August 05, 2013 5:51 PM  
**To:** Barry G. Ziker  
**Cc:** John Black; Rick Wetmore; John Ahlers; Scott Parker; Carly Summers

**Subject:** RE: Ashue Road

Barry: Attached, action memo signed today for Ashue Road Asbestos. I'm meeting tomorrow morning with the Yakama Nation Tribal Council to discuss.

If you're available on Weds, I think this would be a good time for us to talk again, before EPA proceeds to implement this work and incur costs accordingly.

Please let me know if and when you are available to meet.

Thanks.

**Clifford J. Villa**

Assistant Regional Counsel

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**From:** Barry G. Ziker [<mailto:bziker@jzplaw.com>]

**Sent:** Wednesday, June 19, 2013 3:10 PM

**To:** Villa, Clifford

**Cc:** John Black; Rick Wetmore; John Ahlers; Scott Parker; Carly Summers

**Subject:** RE: Ashue Road

Cliff,

I wanted to let you know about our activities since the date of my prior email. As we previously advised you, Scott Parker of Argus Pacific has been conducting an exhaustive review of the documentation regarding asbestos assessment and disposal in connection with the Wapato High School project. This assessment continued after the date of my email and Scott continued to work with Fulcrum and iRS to complete his analysis. (This process was delayed to some extent by vacation schedules.)

Scott just recently closed the loop on the last open items for his analysis of the asbestos-related documentation. As proposed in my prior email to you, Scott is now in the process of working with other PRPs, principally Fulcrum on the technical side, to propose a scope of work with associated tasks and standards for asbestos assessment at the Ashue Road site. Once the PRPs have agreed on that proposed assessment, Scott intends to contact Jeff Fowlow and arrange for a meeting to review technical issues. We expect to have that proposal in the next few weeks.

As always, please feel free to call me with any questions. Thanks very much.

Barry

Barry G. Ziker

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**From:** Barry G. Ziker  
**Sent:** Thursday, May 16, 2013 5:49 PM  
**To:** 'Villa, Clifford'  
**Cc:** John Black; Rick Wetmore; John Ahlers  
**Subject:** RE: Ashue Road

Cliff,

Thanks for your call today. I'm writing to provide an update on the Ashue Road site assessment. As a preliminary matter, please accept my apologies for not keeping you apprised of our progress since our last meeting. I thought that we had accomplished this through contact with Jeff Fowlow, and in fact, I did confirm that Scott Parker reached out to Jeff last week but did not receive a return call. Nevertheless, we will certainly do a better job of keeping you in the loop.

Since the time you and I met, we have taken a number of actions, including the following:

- We formally retained Scott Parker of Argus Pacific to serve as the consultant for Groat Brothers.
- Scott traveled to the Ashue Road site (sometimes referred to as the "Site") and conducted a thorough visual assessment of the Site.
- After his Site visit, Scott confirmed with Jeff Fowlow that he was authorized and directed to work with EPA collaboratively in connection with the Site.
- We have provided to Scott, and he has reviewed, substantial background information regarding the Site and the school project (more on this below).
- Scott spoke with Jeff Fowlow on May 8 about the proposed Site investigation, but it soon became clear that there was a fundamental issue that we believe must be resolved – i.e., our best, current information is that only concrete and river rock were taken from the Wapato school project to the Site. It seems that EPA believes all of the surface materials at the Site are from the school project and this creates a need for a threshold investigation on this issue.
- Following up on their May 8 phone call, Jeff suggested in an email that he, Scott and Julie Wroble discuss the Site late last week or this week. As note above, Scott did return the call to advise that we had some additional steps to complete before meeting, but there was apparently some mix-up as Scott's



- call was not returned or he did not receive Jeff's message if one was left.
- Based upon the need to correlate materials at the Ashue Road site and their nexus to the school project, Scott initiated an extensive review of documentation from Fulcrum, iRS and the general contractor. We also felt it was critical to bring Fulcrum and iRS actively into the process.
  - Scott spoke with Rob Reed from iRS about the project and documentation as part of his investigation.
  - We reached agreement on Fulcrum's participation in this process just last week, on May 9.
  - It is our belief that Argus Pacific should work with Fulcrum and iRS both with respect to the identification, handling, and disposal of asbestos containing material during the high school demolition project, and regarding assessment at the Site. Scott has, accordingly, spent time this week reviewing documents and compiling a list of questions and comments for Fulcrum and iRS to clarify some of the information in the documents.
  - Scott will meet with Fulcrum and iRS as soon as his review is complete and will reach out to Jeff to meet and discuss this review and the proposed scope of a Site assessment.

I believe that brings us up to date. Nothing in this email or in any other communication is to be deemed an admission of liability.

Please call me if you'd like to discuss this matter further.

Thank you.

Barry

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**From:** Villa, Clifford [<mailto:Villa.Clifford@epa.gov>]  
**Sent:** Monday, April 01, 2013 5:44 PM  
**To:** Barry G. Ziker  
**Cc:** John Black; Rick Wetmore; John Ahlers; [joe@yakamanation-olc.org](mailto:joe@yakamanation-olc.org); [paul.mcilrath@co.yakima.wa.us](mailto:paul.mcilrath@co.yakima.wa.us)  
**Subject:** RE: Ashue Road

Barry, All:

In response to your request below, EPA is granting your request for a two-week extension in order to submit a draft work plan to address the Ashue Road Asbestos Site. As such, the draft work plan will be due to EPA on April 16, 2013.

Between now and then, let me again encourage the PRP group to have a technical contact get in touch with EPA's On-Scene Coordinator Jeff Fowlow to discuss expectations for the work plan, and perhaps help avoid any undue delay and expense in getting the work plan approved by the agencies. Jeff can be reached by phone at (206) 553-2751 or via email at [fowlow.jeffrey@epa.gov](mailto:fowlow.jeffrey@epa.gov).

Best Regards,

Clifford J. Villa  
Assistant Regional Counsel  
U.S. EPA Region 10  
desk: (206) 553-1185  
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---

**From:** Barry G. Ziker [<mailto:bziker@jzplaw.com>]  
**Sent:** Monday, April 01, 2013 1:02 PM  
**To:** Villa, Clifford  
**Cc:** John Black; Rick Wetmore  
**Subject:** Ashue Road

Cliff,

Thank you for taking the time to speak with me last Friday regarding the Ashue Road site in Wapato. As discussed during our call, our firm has just recently been engaged as environmental counsel for Groat Brothers, Inc. ("Groat").

Based upon your email dated March 20, 2013 to Rick Wetmore and John Ahlers, EPA has requested a work plan on or before April 2, 2013. As a result of our review of the current status of this matter, and in consultation with Mr. Wetmore's firm and our mutual client, we concluded that there has been insufficient time to allow the parties to fashion a response to EPA. We believe it is in the best interest of the EPA and the PRPs to provide a coordinated response; while the parties have been very actively working towards this end, there has simply been insufficient time to collaborate as a PRP group.

Accordingly, this will confirm our request to extend the date by which EPA seeks a response to April 16, 2013. You indicated that you had the authority to provide a one-week extension, but that you would need to secure additional authority to provide an extension beyond that time period. We appreciate the one-week extension, and do request that the time to respond to your email be deferred for an additional week, for a total of two weeks.

We appreciate your consideration in this matter, and look forward to continuing to work with you and EPA.

Barry

Barry G. Ziker

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